

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
IN RE: EPHEDRA PRODUCTS LIABILITY : 04 M.D. 1598(JSR)
LITIGATION :
-----X

PERTAINS TO ALL CASES :
-----X

**AFFIDAVIT OF JOHN C. THORNTON, ESQ. IN SUPPORT OF MOTION FOR
REIMBURSEMENT OF EXPENSES INCURRED BY ANDREWS & THORNTON
PRIOR TO THE ASSIGNMENT OF MDL 1598**

I, John C. Thornton, Esq., hereby declare:

1. I am an Attorney duly licensed to practice law in the State of California and admitted to practice *pro hac vice* before this Court.
2. I have personal knowledge of the following facts and, if called as a witness, I could competently testify thereto.
3. This Affidavit is an explanation of expenses incurred by Andrews & Thornton in connection with the Twinlab Chapter 11 case, *In Re: TL Administration Corporation, et al. (Twinlab)*. These expenses were incurred after the filing of Bankruptcy by Twinlab and prior to the formation of MDL-1598.
4. On September 4, 2003, TL Administration Corp. (f/k/a Twinlab Corporation), TL Administration Inc. (f/k/a Twin Laboratories Inc.) and TL Administration (UK) Ltd. (f/k/a Twin Laboratories (UK) Ltd.) (hereinafter collectively "Debtors") filed a petition for reorganization under Chapter 11 of Title 11 of the United States Code.

5. Twinlab involved a company with a significant portion of its corporate debt in bonds and with an organized bond creditor group. The bond creditor group in effect controlled the official committee of unsecured creditors and had interests significantly adverse to tort claimants, who were also unsecured creditors of Twinlab. The non-tort claim creditors accounted for \$70 million in claims and would compete directly with the tort creditors for the limited sums that would be available for Twinlab's general creditors. Simply put, it was in the interest of the bond creditor group to challenge and seek to disallow or materially reduce the claimed value of the tort creditors' claims, which were unliquidated and subject to the uncertainties of litigation.

6. Anne Andrews, Esq., an officer of Andrews & Thornton, contacted a number of attorneys for advice about how to establish a position for the tort claimants within the bankruptcy. She consulted with a prominent New York attorney who worked with Andrews & Thornton as co-counsel on a previous Twinlab case, *McDonald v. Twinlab, et al.* Ms. Andrews was advised to contact and retain Fred Brooks, a Financial Consultant with extensive experience in bankruptcy.

7. Andrews & Thornton retained Fred Brooks of Connecticut Economics as a Financial Consultant to help with the daunting problem of establishing an effective position for the tort claimants.

8. Mr. Brooks analyzed the Twinlab Bankruptcy and provided the benefit of his experience in complex bankruptcy and with bond creditors. He provided assistance and direction in connection with addressing the challenges presented at the onset of the case for all tort claimants, including the problems of dealing with the unofficial Creditor Committee which was, as discussed above, hostile to the claims of the tort claimants.

Mr. Brooks provided expert analysis of the situation and proposed the first steps of a plan of action. He explained that the tort claimants constituted a significant general unsecured creditor constituency to which the creditors owed fiduciary obligations. Mr. Brooks emphasized the importance of retaining dynamic creative counsel to represent the tort claimants. He assisted in locating various professionals, most importantly David Molton, Esq., then of Buchanan Ingersoll, P.C.

9. Mr. Brooks' services were rendered in September and October of 2003, however payments for his services were made in six payments of \$6,800.00: three in December 2003; one in February, 2004; one in March 2004 and a final payment in April 2004. A copy of Mr. Brooks's bill from Connecticut Economics dated November 7, 2003 along with the front and back of checks: No. 1015, dated December 1, 2003; No. 1017 dated December 10, 2003; No. 1022 dated December 10, 2003; No 1028 dated February 9, 2004; No. 1035 dated March 11, 2004; No. 1038 dated April 21, 2004 are attached collectively as Exhibit 1.

10. David Molton was retained in October of 2003. The initial payment for the professional services of Mr. Molton and his firm, Buchanan Ingersoll, P.C., were made by Andrews & Thornton. A \$10,000 retainer was paid on November 7, 2003. A copy of the front and back of check number 1008 dated November, 7, 2003 is attached as Exhibit 2.

11. The foundation for the consensual non-litigated resolution to all underinsured claims and related indemnity claims within a plan of liquidation was devised during those formative days. The work performed by Anne Andrews, Fred Brooks and David Molton and others during the pre MDL period was integral to the

resolution of the Twinlab underinsured cases. This pre MDL work, and the associated costs, also served as a template for the subsequent resolution of the Muscletech, NVE and Metabolife bankruptcies.

12. An Official Tort Claimants Committee was appointed by Judge Blackshear, over objections from trade creditors, and a valuation was made of the tort claims by an expert retained by the Official Tort Claimants Committee. Thereafter, the interested parties, working together on the then Twinlab global settlement template, obtained from this Court a temporary stay against non-debtor defendants to prevent indemnification claims from being liquidated to the estate's detriment and to permit global negotiations with Twinlab, its insurer, retailers and other co-defendants. The global settlement of underinsured tort claims required cash contributions from Twinlab, its retailers and other co-defendants, in exchange for releases and channeling injunctions to achieve finality for all participating parties. The final step was the consensual allocation of the global settlement by a referee, Retired Justice John Trotter. Ms. Andrews and Mr. Molton believed and proclaimed that such a resolution could be accomplished even before the determination by the Court of the science/*Daubert* trial which was held by the Court in early 2005. Their belief was greeted by almost universal skepticism at the time.

13. Anne Andrews, Esq. served on the Creditor Committee for all four (4) bankruptcies and David Molton served as Committee Counsel for Official Committees in the Twinlab, Muscletech, NVE and Metabolife bankruptcies. Although Muscletech as a Chapter 15 Bankruptcy posed some unique and challenging problems, the Twinlab template prevailed in Muscletech, NVE, and Metabolife.

14. This Affirmant respectfully requests that this Court recognize that the work and expenses incurred by Andrews & Thornton prior to the formation of the MDL was integral to the resolution achieved in the Twinlab bankruptcy and directly benefited future MDL cases including those cases in the Muscletech, NVE and Metabolife bankruptcies. These costs have not been previously reimbursed from any other source.

15. This Affirmant respectfully requests that this Court find good cause exists to reimburse Andrews & Thornton in the amount of \$50,800.00. This amount reflects the costs paid to Fred Brooks of \$40,800.00 for his professional services and to Buchanan Ingersoll, P.C. for \$10,000.00

I declare under penalty of perjury under the laws of the State of New York that the foregoing is true and correct and that this Affidavit was executed this 30th day of April 2008 at Santa Ana, California.



John C. Thornton, Esq.

EXHIBIT

1

CONNECTICUT ECONOMICS CORPORATION
 189 Shore Road
 Old Greenwich, CT 06870
 203 637 0069

November 7, 2003

Ann Andrews, Esq.
 Andrews & Thornton
 820 N. Parton, 2nd Floor
 Santa Ana, California

In re Twinlab Corporation, et al
 Chapter 11 Case No. 03-15564

For consulting and advisory services of Frederic H. Brooks for the period from September 26, 2003 to October 29, 2003.

102 hours

\$40,800 including disbursements

U payments

<u>Date</u>	<u>Ch#</u>	<u>Amount</u>
* 12/1/03	1015	6,800
12/10/03	1017	6,800
12/16/03	1022	6,800
2/9/04	1028	6,800
3/11/04	1035	6,800
4/21/04	1038	6,800
		<u>40,800</u>

ANDREWS & THORNTON LAW OFFICES
COST ACCOUNT
820 N PARTON, 2nd FLOOR
SANTA ANA, CA 92701



PACIFIC
MERCANTILE
BANK

BD-4286/1222

450 Newport Center Drive, Ste. 100
Newport Beach, CA 92660

1015

Exhibit D
12/1/2003

PAY TO THE Fredric H Brooks

**6,800 00
\$

Six Thousand Eight Hundred and 00/100*****

DOLLARS

Fredric H Brooks
189 Shore Rd
Old Greenwich, CT 06870

SEARCHED
SERIALIZED
INDEXED
FILED
IP

MEMO

DO 10 15 01 12 22 4 28 69 00 27 22 30 4

1015

ANDREWS & THORNTON LAW OFFICES Cost Account

12/1/2003

6,800 00

Fredric H Brooks

LH-AT Joint Cost - 27223

6,800 00

1015

ANDREWS & THORNTON LAW OFFICES Cost Account

12/1/2003

6,800 00

Fredric H Brooks

LH-AT Joint Cost - 27223

6,800 00

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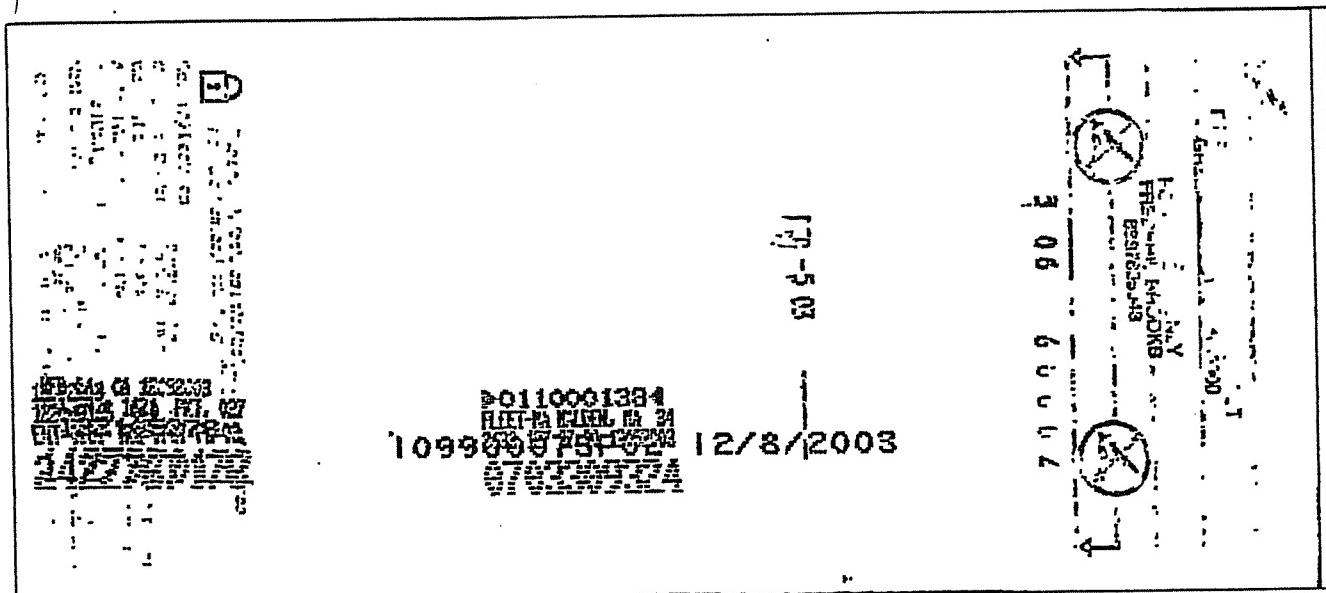
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ANDREWS & THORNTON LAW OFFICES COST ACCOUNT 629 N. FALCON, 2ND FLOOR SANTA ANA, CA 92701	PAT P.C. MTH, INC. LLC BALD 450 Newport Center Drive Suite 500 Newport Beach, CA 92660	1015
	SO-42957222	12/12/03
PAY TO THE Fredrik H. Block	\$ 6800.00	
ORDER OF	DOLLARS	
Fredrik H. Block 189 Shore Rd Old Greenwich, CT 06870	<i>LLC</i>	
MEMO		
#00-10-15# 01-22-24-2869# 00-27-22304# 00000680000#		

1015 Front 12/08/03 \$6800.00



1015 Back 12/08/03 \$6800.00

ANDREWS & THORNTON LAW OFFICES
COST ACCOUNT
820 N PARTON, 2nd FLOOR
SANTA ANA, CA 92701



PACIFIC MERCANTILE BANK
450 Newport Center Drive, Ste 100
Newport Beach, CA 92660

9D-4286/1222

Exhibit D
12/10/2003

1017

PAY TO THE Connecticut Economics Corporation
ORDER OF

Six Thousand Eight Hundred and 00/100*****
***** \$ **6,800 00 ***** DOLLARS

Connecticut Economics Corporation
Attn Fred Brooks
37 MacArthur Dr
Old Greenwich, CT 06870

MEMO

Second Payment

100 1017 122428691 002722304

ANDREWS & THORNTON LAW OFFICES Cost Account
Connecticut Economics Corporation

12/10/2003

1017

6,800 00

LH-AT Joint Cost - 27223 Second Payment

6,800 00

ANDREWS & THORNTON LAW OFFICES Cost Account
Connecticut Economics Corporation

12/10/2003

1017

6,800 00

LH-AT Joint Cost - 27223 Second Payment

6,800 00

PAGE 3

Period: 11/2

ANDREWS & THORNTON LAW OFFICES COST ACCOUNT 220 N. PARTON, 2ND FLOOR SANTA ANA, CA 92701	1017
11 MERCANTILE	423 Newport Center Drive, Suite 100 Newport Beach, CA 92660
	90-42367327
	12/16/2003
PAY TO THE Comerica Economics Corporation ORDER OF	\$ 6800.00
Six Thousand Eight Hundred and 00/100	DOLLARS
Comerica Economics Corporation Attn: Fred Brooks 37 MacArthur Dr OJL Greenwich, CT 06870	<i>[Signature]</i>
MEMO	Second Payment
N001017 12224269 002722304	

1017

Front 12/26/03

\$6800.00

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DEB 27 13			

1017

Back 12/26/03

\$6800.00

ANDREWS & THORNTON LAW OFFICES
COST ACCOUNT
820 N PARTON, 2nd FLOOR
SANTA ANA, CA 92701



450 Newport Center Drive, Ste 100
 Newport Beach, CA 92660

90-4286/1222

1022
 Exhibit D
 12/10/2003

PAY TO THE Connecticut Economics Corporation
 ORDER OF

**6,800 00
 \$

Six Thousand Eight Hundred and 00/100*****

DOLLARS

Connecticut Economics Corporation
 Attn Fred Brooks
 37 MacArthur Dr
 Old Greenwich, CT 06870

LLC in
 IP
 Safeguard Inc.

MEMO

Third Payment

1022 12242869 002722304

ANDREWS & THORNTON LAW OFFICES Cost Account
 Connecticut Economics Corporation

12/10/2003

6,800 00

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LH-AT Joint Cost - 27223 Third Payment

6,800 00

ANDREWS & THORNTON LAW OFFICES Cost Account
 Connecticut Economics Corporation

12/10/2003

6,800 00

1022

LH-AT Joint Cost - 27223 Third Payment

6,800 00

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Account: 2722304

Period: 1/1/2004 To :

ANDREWS & THORNTON LAW OFFICES COST ACCOUNT 634 H. MARTEL, SUITE 100 SANTA BARBARA, CA 93101	PACIFIC BANK 420 Newport Center Drive, Ste. 100 Newport Beach, CA 92660	1022
10-4224-1022		12-10-2003
PAY TO THE ORDER OF Cohort Economics Corporation 510 North Figueroa Street, Suite 1000 Los Angeles, CA 90012		\$ 6800.00
Cohort Economics Corporation Attn: Fred Brooks 37 MacAndrew Dr Old Greenwich, CT 06850		DOLLARS
MEMO Third Payment	LLC Inv	
	#00-10-224-12224-28691-00-2722304-2	
	#000006800000-2	

1022 Front 01/14/04 \$6800.00

Customer Information Name: Cohort Economics Corporation Address: 37 MacAndrew Dr City: Old Greenwich State: CT Zip: 06850 Phone: (203) 869-2224 Fax: (203) 869-2224 Email: fbrooks@cohort.com Web Address: www.cohort.com	0070 3.05 JAN 12 2004 PACIFIC BANK Cohort Economics Corporation 37 MacAndrew Dr Old Greenwich, CT 06850 10224-28691-00-2722304-2
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1022 Back 01/14/04 \$6800.00

ANDREWS & THORNTON LAW OFFICES
COST ACCOUNT
820 N PARTON, 2nd FLOOR
SANTA ANA, CA 92701



PACIFIC MERCANTILE BANK
 450 Newport Center Drive, Ste 100
 Newport Beach, CA 92660

90-428671222

1028

Exhibit D
 2/9/2004

PAY TO THE Connecticut Economics Corporation
 ORDER OF

\$ **6,800 00

Six Thousand Eight Hundred and 00/100*****
 ***** DOLLARS

Connecticut Economics Corporation
 Attn Fred Brooks
 37 MacArthur Dr
 Old Greenwich, CT 06870



MEMO

Fourth Payment

10 00 10 28 00 1 2224 28690 002722304

1028

ANDREWS & THORNTON LAW OFFICES Cost Account

2/9/2004

6,800 00

Connecticut Economics Corporation

LH-AT Joint Cost - 27223 Fourth Payment

6,800 00

ANDREWS & THORNTON LAW OFFICES Cost Account

1028

Connecticut Economics Corporation

2/9/2004

6,800 00

LH-AT Joint Cost - 27223 Fourth Payment

6,800 00

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M03SF027735

SAFEGUARD UNDERSAFETY SYSTEMS INC.

Account:2722304

Period: 2/28/2004

ANDREWS & THORNTON LAW OFFICES COST ACCOUNT 220 N. PARTON, 2nd FLOOR SANTA ANA, CA 92701		PACIFIC MERCHANTILE BANK	450 Newport Center Drive, Ste. 100 Newport Beach, CA 92660	1028
			50-42987122	2/9/2004
PAY TO THE ORDER OF		** \$ 6,500.00		
Six Thousand Eight Hundred and 00/100				DOLLARS
Connecticut Economics Corporation Ann: Fred Brooks 37 MacArthur Dr Old Greenwich, CT 06870		<i>Lilac</i>		
MEMO	Fourth Payment			
F001028# 0122242869# 002722304# 00000580000#				

1028 Front 03/04/04 \$6800.00

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1028 Back 03/04/04 \$6800.00

ANDREWS & THORNTON LAW OFFICES
COST ACCOUNT
 820 N PARTON, 2nd FLOOR
 SANTA ANA, CA 92701

PACIFIC MERCANTILE BANK 450 Newport Center Drive, Ste 100
 Newport Beach, CA 92660

90-4286/1222

Exhibit D
 3/11/2004

1035

PAY TO THE Connecticut Economics Corporation
 ORDER OF

Six Thousand Eight Hundred and 00/100*****

**6,800 00
 \$

DOLLARS

Connecticut Economics Corporation
 Attn: Fred Brooks
 37 MacArthur Dr
 Old Greenwich, CT 06870



MP
Safeguard Security Co.

MEMO

Fifth Payment

#001035# 1622242869# 002722304#

ANDREWS & THORNTON LAW OFFICES Cost Account
 Connecticut Economics Corporation

3/11/2004

1035

6,800 00

LH-AT Joint Cost - 27223 Fifth Payment

6,800 00

ANDREWS & THORNTON LAW OFFICES Cost Account
 Connecticut Economics Corporation

3/11/2004

1035

6,800 00

LH-AT Joint Cost - 27223 Fifth Payment

6,800 00

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ANDREWS & THORNTON LAW OFFICES COST ACCOUNT 820 N. PARTON, 2nd FLOOR SANTA ANA, CA 92701		PACIFIC MERCHANTILE BANC	400 Newport Center Drive, Ste. 100 Newport Beach, CA 92660	1035
			90-478671222	3/11/2004
PAY TO THE ORDER OF Connecticut Economics Corporation			\$ 46,800.00	DOLLARS
Six Thousand Eight Hundred and 00/100				
Connecticut Economics Corporation Attn: Fred Brooks 37 MacArthur Dr. Old Greenwich, CT 06870				
MEMO	Fifth Payment			
FOO 1035# 012224 28696 002722304#		70000800000#		

1035

Front 03/18/04

\$6800.00

1035

Back : 03/18/04

\$6800.00

1038

ANDREWS & THORNTON LAW OFFICES
COST ACCOUNT
820 N PARTON, 2nd FLOOR
SANTA ANA, CA 92701



PACIFIC MERCANTILE BANK
 450 Newport Center Drive, Ste 700
 Newport Beach, CA 92660

SD-4286/1222

Exhibit D

**6,800 00

PAY TO THE Connecticut Economics Corporation
 ORDER OF

Six Thousand Eight Hundred and 00/100*****

\$

DOLLARS

Connecticut Economics Corporation
 Attn Fred Brooks
 37 MacArthur Dr
 Old Greenwich, CT 06870



MEMO

Sixth (Final) Payment

1038 1222428690 002722304*

1038

ANDREWS & THORNTON LAW OFFICES Cost Account

4/21/2004

6,800 00

Connecticut Economics Corporation

LH-AT Joint Cost - 27223 Sixth (Final) Payment

6,800 00

1038

ANDREWS & THORNTON LAW OFFICES Cost Account

4/21/2004

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Connecticut Economics Corporation

LH-AT Joint Cost - 27223 Sixth (Final) Payment

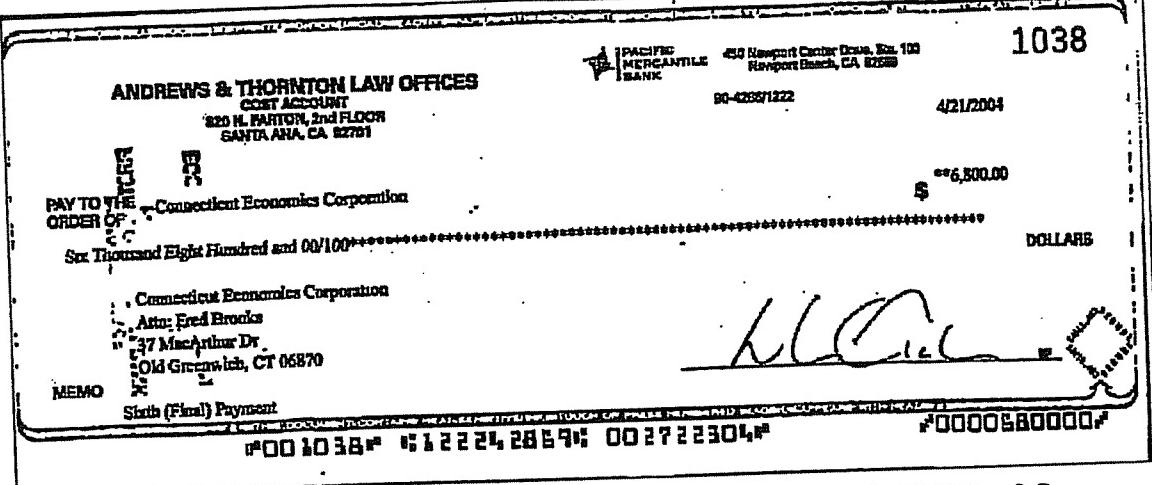
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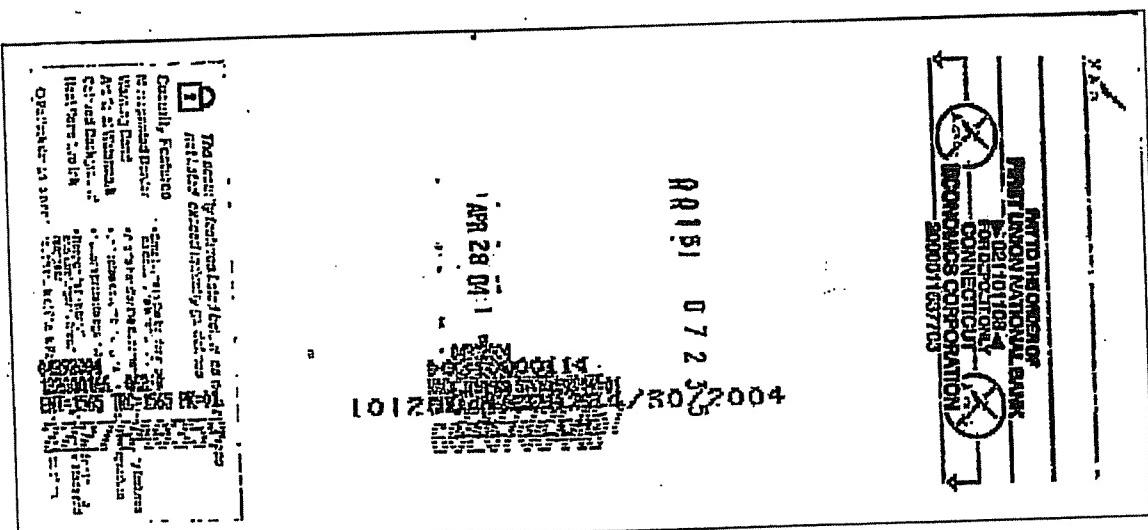
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1038

Front 04/30/04

\$6800.00



1038

Back 04/30/04

\$6800.00

EXHIBIT

2

**ANDREWS & THORNTON LAW OFFICES
COST ACCOUNT
820 N PARTON, 2nd FLOOR
SANTA ANA, CA 92701**

PACIFIC MERCANTILE BANK 450 Newport Center Drive, Ste 100
Newport Beach, CA 92660

97-4286/1222

Exhibit D
11/7/2003

1008

PAY TO THE Buchanan Ingersoll PC
ORDER OF

\$ **10,000 00

Ten Thousand and 00/100***** DOLLARS

Buchanan Ingersoll PC
140 Broadway, 35th Floor
New York, NY 10005-1101

100

MEMO

Twin Lab BK Representation

00010086 61222428690 002722304

1008

ANDREWS & THORNTON LAW OFFICES Cost Account

11/7/2003

10,000.00

Buchanan Ingersoll PC

J H-AT Joint Cost - 27223 Twin Lab BK Representation

10,000 00

ANDREWS & THORNTON LAW OFFICES Cost Account

1008

Duckham Jarrett PC

11/7/2003

10.000.00

L-H-AT Joint Cst - 27223 Twin Lab BK Representation

10.000.00

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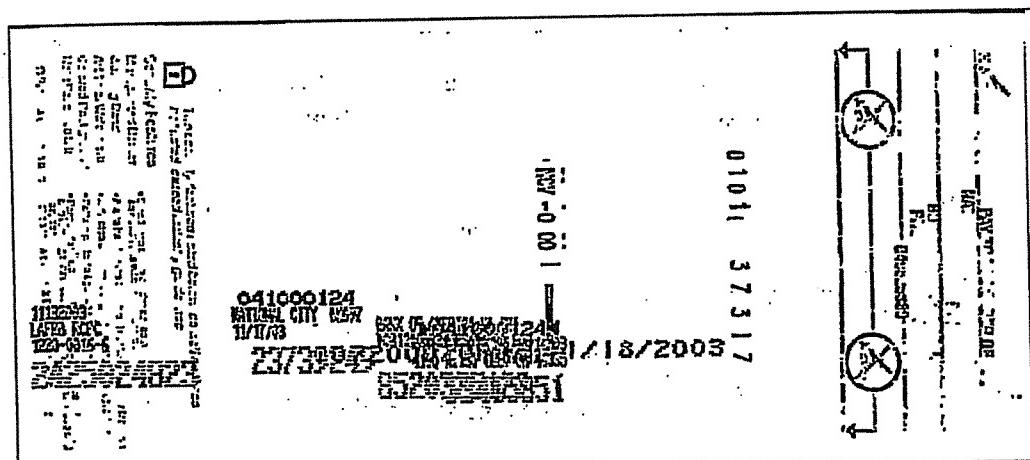
PAGE 3

Period: 11

ANDREWS & THORNTON LAW OFFICES CONT ACCOUNT C/O NANCY L. WILCOX SAN JOAQUIN, CA 95330	PACIFIC MERRILL LYNCH 1000 1171303 1171303 10000000 DOLLARS
PAY TO THE Bachman Ingrossi PC , ORDER OF Ton Thornton (00700) Bachman Ingrossi PC 140 Broadway, 35th Floor New York, NY 10005-1101 MEMO Twin Lab BK Representatio	
1000-1008-0-1-2-2-24 285915-00 27-1-2304	

ALC/L

1008 Front 11/18/03 \$10000.00



1008 Back 11/18/03 \$10000.00